# Mohammad bin Hassan v Public Prosecutor

HIGH COURT (MELAKA) — CRIMINAL APPEAL NO 41–44 OF 1996
AUGUSTINE PAUL JC
17 JANUARY 1997

***Criminal Procedure*** *— Sentence — Plea of guilty — Duty of court before passing sentence — Whether procedure before sentencing an accused under s 173(b) and (m)(2) of the Criminal Procedure Code mandatory — Whether accused had pleaded guilty personally and understood the nature and consequences of his plea — Whether accused admitted without qualification the offence alleged against him — Whether plea of guilty must be set aside — Criminal Procedure Code (FMS Cap 6) s 173(b), (m)(2)*

***Criminal Procedure*** *— Sentence — Plea of guilty — Appeal against sentence — Whether accused may contend at the hearing of his appeal that the conviction was illegal and request the court hearing the appeal to act in revision — Whether the court is entitled to and will, where appropriate, act in revision and set aside a conviction — Criminal Procedure Code (FMS Cap 6) s 305*

The accused was charged and pleaded guilty before the Magistrate's Court at Jasin on account of possessing and with intention to sell an admission permit which was found to be a forged permit. He was found guilty and convicted under s 56(1A)(b) of the Immigration Act 1959/63 ('the Act') and was imposed a sentence of one year's imprisonment under s 57 of the Act. It was uncertain whether the accused admitted the facts as contained in the summary of the facts of the case ('exh P2'). There was no record to show that the facts were explained to the accused. It was also not shown in the record that the guilty plea of the accused was accepted by the learned magistrate. The accused appealed against the sentence.

**Held**, setting aside the plea of guilty, substituting with a plea of not guilty and remitting the case to the magistrate's court for trial:

(1) The procedure to be followed by a magistrate before sentencing an accused who has pleaded guilty is contained in s 173(b) and (m)(2) of the Criminal Procedure Code (FMS Cap 6) ('the CPC'). These are mandatory requirements and once an accused person appears before the court, the court is bound to proceed with his trial in accordance with the procedure laid down. In this case, the accused had pleaded guilty personally after he had understood the charge which was read and explained to him. The record did show that he understood the nature and consequences of his plea at that stage.

However, the learned magistrate did not follow the prescribed procedure in s 173(b) and (m)(2) of the CPC in sentencing the accused. The record did not show that the facts were explained to the accused to enable the magistrate to satisfy himself that the accused had intended to admit without qualification the offence alleged against him. Furthermore, there was also no certainty

that the facts as contained in exh 2 were admitted by the accused. These breaches violated s 173(b) of the CPC. Also, the record did not disclose that the plea was accepted by the learned magistrate and this failure violated s 173(m)(2) of the CPC (see pp 70G, 74I and 75A–C); *PP v Leonard* [1960] MLJ 13 followed.

(2) Section 305 of the CPC provides that a person who has been convicted on his plea of guilt is entitled to appeal only against the extent or legality of the sentence. Once such an appeal has been lodged, there is nothing to prevent an appellant from contending at the hearing that the conviction is illegal and requesting the court hearing the appeal to act in revision. The court is entitled to and will, where appropriate, act in revision and set aside a conviction (see p 75E–F); *Lee Yu Fah & Ors v PP* [1937] MLJ 179, *Mohd Dalhar bin Redzwan & Anor v Datuk Bandar, Dewan Bandaraya Kuala Lumpur* [1995] 1 MLJ 645 and *PP v Mohamed Tarmizi* [1985] 1 MLJ 219 followed.

**[Bahasa Malaysia summary**

Tertuduh dipertuduhkan dan mengaku salah di Mahkamah Majistret Jasin atas kesalahan memiliki dan berniat menjual permit kemasukan yang didapati adalah permit palsu. Dia didapati bersalah dan disabit di bawah s 56(1A)(b) Akta Imigresen 1959/63 ('Akta tersebut') dan dikenakan hukuman pemenjaraan selama setahun di bawah s 57 Akta tersebut. Adalah tidak tentu sama ada tertuduh mengakui fakta-fakta seperti yang terkandung dalam ringkasan fakta-fakta kes ('eks 2'). Tiada rekod untuk menunjukkan bahawa fakta-fakta telah dijelaskan kepada tertuduh. Ia juga tidak ditunjukkan dalam rekod bahawa akuan bersalah tertuduh diterima oleh majistret yang arif. Tertuduh merayu terhadap hukuman itu.

**Diputuskan,** mengetepikan akuan bersalah, mengganti dengan akuan tidak bersalah dan meremitkan kes kepada mahkamah majistret untuk perbicaraan:

(1) Prosedur untuk diikut oleh majistret sebelum menghukum seorang tertuduh yang telah mengaku bersalah adalah terkandung dalam s 173(b) dan (m)(2) Kanun Acara Jenayah (NMB Bab 6) ('KAJ'). Ini adalah keperluan mandatori dan sebaik sahaja seorang tertuduh menghadapi mahkamah, mahkamah mestilah meneruskan perbicaraannya menurut prosedur yang dinyatakan. Dalam kes ini, tertuduh sendiri telah mengaku bersalah selepas dia memahami pertuduhan yang dibaca dan dijelaskan kepadanya. Rekod memang menunjukkan bahawa dia memahami sifat dan akibat akuan pada tahap itu.

Namun demikian, majistret yang arif tidak mengikut prosedur yang ditetapkan dalam s 173(b) dan (m)(2) KAJ dalam menghukum tertuduh. Rekod tidak menunjukkan bahawa fakta-fakta telah dijelaskan kepada tertuduh bagi membolehkan majistret memuaskan diri bahawa tertuduh berniat mengakui kesalahan

yang dikatakan terhadapnya tanpa syarat. Tambahan pula, tiada juga kepastian bahawa fakta-fakta seperti yang terkandung dalam eks 2 diakui oleh tertuduh. Kemungkiran-kemungkiran ini melanggar s 173(b) KAJ. Juga, rekod tidak mendedahkan bahawa akuan diterima oleh majistret yang arif dan kegagalan ini melanggar s 173(m)(2) KAJ (lihat ms 70G, 74I dan 75A–C); *PP v Leonard* [1960] MLJ 13 diikut.

(2) Seksyen 305 KAJ memperuntukkan bahawa seseorang yang telah disabitkan atas akuan bersalah adalah berhak merayu hanya terhadap berat atau sahnya hukuman itu. Sebaik sahaja rayuan demikian dikemukakan, tiada apa-apa yang menghalang perayu daripada menghujahkan di pembicaraan bahawa sabitan itu menyalahi undang-undang dan meminta mahkamah yang mendengar rayuan supaya mengkaji semula. Mahkamah berhak dan akan, di mana wajar, mengkaji semula dan mengetepikan sabitan (lihat ms 75E–F); *Lee Yu Fah & Ors v PP* [1937] MLJ 179, *Mohd Dalhar bin Redzwan & Anor v Datuk Bandar, Dewan Bandaraya Kuala Lumpur* [1995] 1 MLJ 645 dan *PP v Mohamed Tarmizi* [1985] 1 MLJ 219 diikut.]

**Notes**

For cases on sentence, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2213–2674.

**Cases referred to**

*Abdul Kadir bin Abdul Rahman v PP* [1984] 1 MLJ 80 (refd)
*B Naidu, Re* [1965] 1 MLJ 211 (refd)
*Chen Chong & Ors v PP* [1967] 2 MLJ 130 (refd)
*Chin Ban Keat v R* [1949] MLJ 297 (refd)
*Chota bin Abdul Razak v PP* [1991] 3 MLJ 77 (refd)
*Chua Ah Gan v PP* [1958] MLJ liv (refd)
*Hassan bin Dollah v PP* [1996] 5 MLJ 285 (refd)
*Heng Keng Khoon v PP* [1972] 1 MLJ 30 (refd)
*Koh Mui Keow v R* [1952] MLJ 214 (refd)
*Lee Weng Tuck v PP* [1989] 2 MLJ 143 (refd)
*Lee Yu Fah & Ors v PP* [1937] MLJ 179 (folld)
*Lian Kian Boon v PP* [1991] 1 MLJ 51 (refd)
*Lo Kim Peng & Ors v PP* [1979] 1 MLJ 249 (refd)
*Low Hiong Boon v PP* [1948–49] MLJ Supp 135 (refd)
*Mahmood Ali v PP* [1964] MLJ 57 (refd)
*Mohd Dalhar bin Redzwan & Anor v Datuk Bandar, Dewan Bandaraya Kuala Lumpur* [1995] 1 MLJ 645 (folld)
*Mok Swee Kok v PP* [1994] 3 SLR 140 (refd)
*Munandu v PP* [1984] 2 MLJ 82 (refd)
*Nadeson v PP* [1966] 1 MLJ 63 (refd)
*New Tuck Shen v PP* [1982] 1 MLJ 27 (refd)
*Ng Song Luak v PP* [1985] 1 MLJ 456 (refd)
*Palan v PP* [1932] MLJ 124 (refd)

*PP v Abdul Aziz* [1978] 2 MLJ 155 (refd)
*PP v Cheah Chooi Chuan* [1972] 1 MLJ 215 (refd)
*PP v Chean Tin* [1939] MLJ 266 (refd)
*PP v He King Kiok & Anor & Anor* [1992] 2 MLJ 781 (refd)
*PP v Leng Chow Teng* [1985] 1 MLJ 229 (refd)
*PP v Leonard* [1960] MLJ 13 (folld)
*PP v Lim Yoo Hock* [1984] 1 MLJ 309 (refd)
*PP v Mahmud* [1974] 1 MLJ 85 (refd)
*PP v Mohamed Tarmizi* [1985] 1 MLJ 219 (folld)
*PP v Nahat Singh* [1939] MLJ 239 (refd)
*PP v Soon Siew Choon* [1976] 1 MLJ 189 (refd)
*PP v Tengku Hitam* [1962] MLJ 414 (refd)
*PP v Yiap Tai Juan & Ors* [1957] MLJ 38 (refd)
*PP v Yong Chin* [1952] MLJ 142 (refd)
*PP v Yusof* [1964] MLJ 264 (refd)
*R v Tan Thian Chai & Anor* [1932] MLJ 74 (refd)
*Sau Soo Kim v PP* [1975] 2 MLJ 134 (refd)
*Subramaniam & Anor v PP* [1976] 1 MLJ 76 (refd)
*Supramaniam v Kanthasamy* [1956] MLJ 18 (refd)
*Tukiran bin Taib v PP* [1955] MLJ 24 (refd)

**Legislation referred to**

Criminal Procedure Code (FMS Cap 6) ss 173(b), (m)(2), 305
Evidence Act 1950 s 114(e)
Immigration Act 1959/63 ss 56(1A)(b), 57

**Appeal from**: Criminal Case No 83–100 of 1996 (Magistrate's Court, Jasin)

*G Subramaniam Nair* (*Maniam Nair & Co*) for the appellant.
*Anslem Charles Fernandis* (Deputy Public Prosecutor) for the respondent.

**Augustine Paul JC**: The charge preferred against the accused in this appeal in the Magistrate's Court at Jasin is in the following terms:

> Bahawa kamu pada jam lebih kurang 10.30 malam 27 Ogos 1996 di sebuah rumah bernombor 38, Batu 13, Jalan Bunga Raya, Simpang Pantai, Merlimau, Melaka telah didapati di dalam milikan kamu sekeping Permit Masuk No A 323943 di atas Penama SUPRIADI BIN ROSLAN dan bertindak sebagai orang tengah untuk menjual permit masuk tersebut. Dengan yang demikian, kamu telah didapati dalam perbuatan kamu sebagai persediaan untuk menjual suatu Permit Masuk No A 323943 yang didapati palsu dan telah melakukan satu kesalahan di bawah s 56(1A)(b) Akta Imigresen 1959/63 (seperti yang dipinda oleh Akta Imigresen (Pindaan) 1989) dan boleh dihukum di bawah s 57 Akta yang sama.

The accused pleaded guilty before the learned magistrate who convicted him and imposed a sentence of one year's imprisonment. One of the factors that the learned magistrate took into consideration in passing sentence as stated in his grounds of judgment is as follows:

A Menurut fakta kes pendakwaan, tertuduh telah didapati menjadi orang tengah di dalam kegiatan menjual permit masuk palsu. Permit masuk palsu tersebut dijual RM3,200 sekeping. Perbuatan tertuduh tersebut telah mengakibatkan maruah negara tercemar dan mengakibatkan kerugian kepada negara.

B The accused appealed against the sentence. I heard the appeal on 13 January 1997 and intimated to both the parties that I would deliver judgment on 17 January 1997 which I do so now.

It is necessary for me to reproduce the material parts of the notes of evidence as contained in pp 6–7 of the appeal record in order to appreciate the chronology of events that transpired following the plea being taken by C the learned magistrate. It reads as follows:

Nota Keterangan

3 September 1996:
PO Shahul Hamid bin Abdul Rahim.
D OKT — (h/s)
PBTF M/S PSAP
Izin mendakwa —> P1
Fakta kes —> P2
1 keping Permit Masuk No A 323943 —> P3
Ekshibit — diakui benar oleh tertuduh.

E

Mahkamah
Sabit kesalahan OKT di bawah s 56(1A)(b) Akta Imigresen 1959/63 (Pindaan 1989).

Rayuan mengurangkan hukuman
F Tanggungan saya ramai enam orang anak, menyusu tiga orang dan sekolah tiga orang, sewa rumah dan sebagainya. Beri saya peluang.

Hukuman
Penjara 12 bulan dari tarikh tangkap 27 Ogos 1996.

G Exhibit to prosecution for tindakan selanjutnya.

tt
Mohd Nasir bin Hj Nordin
3 September 1996

H The facts of the case as contained in exh P2 are as follows:

Pengadu kes ini adalah Timbalan Penolong Pengarah Imigresen En Abdullah bin Baba dari Pejabat Imigresen Negeri Melaka. Pada jam lebih kurang 10.30 malam 27 Ogos 1996, sepasukan pegawai-pegawai imigresen telah membuat serbuan ke atas sebuah rumah bernombor 38, Batu 13, Jalan Bunga Raya, Pantai Merlimau, Melaka dan telah menahan seorang lelaki Melayu I kerana disyaki melanggar peruntukan di dalam Akta Imigresen 1959/63 dan turut dirampas ialah sekeping Permit Masuk No A 323943 di atas nama SUPRIADI BIN ROSLAN. Laporan Merlimau 926/96 bertarikh 27 Ogos 1996 berkaitan.

Siasatan yang dijalankan terhadap tertuduh MOHAMMAD BIN HASSAN (L-36th) yang bekerja sebagai penjual ikan telah didapati di dalam milikannya sekeping Permit Masuk No A 323943 di atas nama SUPRIADI BIN ROSLAN untuk dijual berharga RM3,200 satu keping. Permit masuk tersebut didapati palsu. Dengan perlakuan tertuduh cuba bersedia untuk menjualkan suatu permit masuk yang palsu telah didapati melakukan satu kesalahan di bawah s 56(1A)(b) Akta Imigresen 1959/63 (Pindaan 1989) dan boleh dihukum di bawah s 57 dari Akta yang sama. Denda tidak melebihi RM10,000 atau penjara tidak melebihi lima tahun atau kedua-duanya sekali.

The relevant part of the notes of evidence that I have reproduced is a transcript from the original charge sheet which, though not part of the appeal record, was in the court file. What is in the appeal record is only a copy of the charge sheet which does not contain all the entries made on the original charge sheet. From the notes of evidence, it is clear that only three exhibits were tendered with a further note, that is to say:

Ekshibit — diakui benar oleh tertuduh

This part of the notes of evidence is not an accurate transcript of what appears on the original charge sheet which reads as follows:

Ekshibit P4 — diakui benar oleh tertuduh

The exhibit which has been marked as 'P4' does not appear in the notes of evidence. Exhibit P4, whatever it may be, is also not part of the appeal record. As a result of this discrepancy, it is difficult to say with confidence whether the accused made an admission to the three exhibits as stated in the notes of evidence or all the four exhibits or just exh P4 as stated in the original charge sheet. Thus there is no certainty that the accused admitted the facts as contained in exh P2. There is also no record to show that the facts were explained to the accused. The record also does not disclose that the guilty plea of the accused was accepted by the learned magistrate. In the circumstances, it is necessary for me to consider the procedure to be followed by a magistrate before sentencing an accused who has pleaded guilty. The relevant law for this purpose is contained in s 173(b) and (m)(2) of the Criminal Procedure Code (FMS Cap 6) ('the CPC'). These are mandatory requirements and once an accused person appears before a court, the court is bound to proceed with his trial in accordance with the procedure laid down (see *PP v Leonard* [1960] MLJ 13 (CA)).

I shall now deal with these two provisions.

(1) Section 173(b) of the CPC

It reads as follows:

If the accused pleads guilty to a charge whether as originally framed or as amended, the plea shall be recorded and he may be convicted thereon:

Provided that before a plea of guilty is recorded the Court shall ascertain that the accused understands the nature and consequences of his plea and intends to admit, without qualification, the offence alleged against him.

The proviso to the sub-section prescribes certain guidelines to be followed before a plea of guilty is recorded. The use of the words '... shall ascertain ...' in the proviso makes compliance with the guidelines mandatory (see *PP v Leng Chow Teng* [1985] 1 MLJ 229 (FC)). In *Lee Weng Tuck & Anor v PP* [1989] 2 MLJ 143 (SC), it was held that in order to determine the validity of a plea of guilty certain safeguards as provided by the subsection must be followed. They are as follows:

(i) the court must ensure that it is the accused himself who wishes to plead guilty;

(ii) the court must ascertain that the accused understands the nature and consequences of his plea; and

(iii) the court must ascertain that the accused intends to admit without qualification the offence alleged against him.

The three safeguards will now be considered in some detail.

*(i) The accused himself must plead guilty personally*

A plea must, in all cases, be made by the accused personally irrespective of whether he is unrepresented or represented by counsel. In *R v Tan Thian Chai & Anor* [1932] MLJ 74 (HC), it was held that an accused person should plead guilty or claim trial by his own mouth and not through his counsel or advocate (see also *Abdul Kadir bin Abdul Rahman v PP* [1984] 1 MLJ 80 (HC)). Even in cases where evidence had been recorded after the accused had claimed trial and he subsequently wishes to change his plea, the accused must be asked to plead to the charge himself and not through his counsel (see *Mahmood Ali v PP* [1964] MLJ 57 (HC)). The only exception is where the charge is preferred under a statute which expressly allows the accused to plead guilty by letter (see *PP v Leng Chow Teng*).

(ii) *The accused must understand the nature and consequences of his plea*

As a matter of practice, whether an accused person pleads guilty or not, it should always be clear in the record that the charge has been read, explained and understood and that if the plea is one of guilty, it should also be made clear in the record that the accused understands the nature and consequences of his plea (see *Chin Ban Keat v R* [1949] MLJ 297 (HC); *Chua Ah Gan v PP* [1958] MLJ liv (HC) and *Subramaniam & Anor v PP* [1976] 1 MLJ 76 (HC)). Where an accused pleads guilty, the court should record in writing just what the accused said in answer to the charge (see *Lee Yu Fah & Ors v PP* [1937] MLJ 179 (HC)). The court must consider whether it is safe to accept the plea. The court can do that, firstly, by considering each and every ingredient of the charge; secondly, by satisfying itself by questioning the accused whether he really understands the charge and intends to admit without qualification each and every ingredient that constitutes it; and finally, that he clearly understands the nature and consequences of his plea (see *Chen Chong & Ors v PP* [1967] 2 MLJ 130 (HC)). The record must show that the court ascertained that the accused

understood the nature and consequences of his plea (see *PP v Tengku Hitam* [1962] MLJ 414 (HC)). In this regard, I refer to *Hassan bin Dollah v PP* [1996] 5 MLJ 285 where Roberts CJ said at p 291:

> In *Heng Keng Khoon v PP* [1972] 1 MLJ 30, Sharma J referred, while emphasizing the need to be careful before accepting a plea, to the use of the following formula — 'Charge read over and explained to the accused and understood by him. Pleads guilty. Understands the nature and consequences of his plea'.
>
> I see nothing wrong in something of this nature appearing in the record. If it does, it should be presumed that the magistrate did explain to the defendant the nature and consequences of the plea of guilty which he had made.
>
> There is no set formula. It is sufficient if the record shows that the defendant does understand the nature and consequences of his plea and that this has been explained to him by the magistrate.

The presumption that Roberts CJ is referring to is found in s 114(e) of the Evidence Act 1950 which provides that the court may presume that judicial and official acts have been regularly performed. The onus is on the accused to rebut this presumption if he so desires.

*(iii) The accused must admit the offence alleged against him without qualification*

A plea of guilty only amounts to an admission that the accused committed the acts alleged against him and not an admission of the guilt under a particular section of the Act. If he pleads guilty under an erroneous view of the law, his conviction cannot stand. In such a case, the plea of guilty does not avail because he cannot be said to have committed the offence in question in the eyes of the law (see *Heng Keng Khoon v PP* [1972] 1 MLJ 30 (HC)). A plea of guilty to an offence unknown to the law is no plea at all (see *PP v Lim Yoo Hock* [1984] 1 MLJ 309 (HC)). Thus the proviso to the subsection mandates the court to '... ascertain ...' that the requirements laid down therein have been complied with. The court can only ascertain this after being apprised of the facts of the case and it is therefore a necessary corollary of the proviso to set out an outline or a statement of the facts of the case to satisfy the stipulated requirements (see *PP v He King Kiok & Anor* [1992] 2 MLJ 781 (HC)). Its object is to ensure that the accused understands the nature and consequences of his plea and intends to admit, without qualification, the offence alleged against him. It is designed not only to ascertain whether admission of the facts amounts to a plea of guilt in law but also to enable the court to form an opinion on the conduct of the accused in assessing the sentence (see *Palan v PP* [1932] MLJ 124 (HC); *PP v Nahat Singh* [1939] MLJ 239 (HC); *PP v Chean Tin* [1939] MLJ 266 (HC); *Tukiran bin Taib v PP* [1955] MLJ 24 (HC); *Abdul Kadir bin Abdul Rahman v PP* [1984] 1 MLJ 80 (HC); *Lian Kian Boon v PP* [1991] 1 MLJ 51 (HC); *New Tuck Shen v PP* [1982] 1 MLJ 27 (HC) and *Lee Weng Tuck v PP*). Failure to take evidence or a statement of the facts and record them will result in the conviction being

quashed (see *Supramaniam v Kanthasamy* [1956] MLJ 18 (HC) and *Nadeson v PP* [1966] 1 MLJ 63 (HC)).

The facts presented to the court after a plea of guilty should be a short summary of the facts of the case. The length of the narrative will depend on the nature of the charge and seriousness of the case. It is not required to be some kind of litany in which the wording of the section of the Act under which the accused has been charged should be faithfully reproduced. It should be confined to facts which the prosecution is able to prove and then only to facts necessary to establish the charge (see *Chen Chong & Ors v PP*; *Abdul Kadir bin Abdul Rahman v PP* and *Lian Kian Boon v PP*). In simple and straightforward cases, the outline of the facts is usually done orally but in more involved cases, the outline may be in the form of a written statement (see *Mok Swee Kok v PP* [1994] 3 SLR 140 (CA)). But in cases of doubt or difficulty, it may be advisable to have evidence led as to the facts. The course adopted in each case must be left to the court's discretion (see *Chin Ban Keat v R* and *PP v Abdul Aziz* [1978] 2 MLJ 155 (HC)). A record of the facts merely as 'facts as in charge' is not sufficient as it does not indicate whether an offence is disclosed (see *Nadeson v PP* and *PP v Abdul Aziz*). It is the duty of the magistrate to defer acceptance of a plea of guilty until he has the facts alleged by the prosecution fully before him. Accordingly he should, where necessary, postpone the case to give the prosecution a reasonable opportunity of completing their inquiries and grant bail to the accused if the case is one in which it seems fitting to do so (see *PP v Yong Chin* [1952] MLJ 142 (HC)).

When recording the facts, the magistrate will also have to record the accused's admission or denial of them. The accused's answer on the accuracy of the facts should be recorded (see *Lee Yu Fah & Ors v PP*). It is not essential, however, that the accused should admit every iota of facts given by the prosecution. If what he admits contains all the ingredients of the offence and what he disputes or does not admit is irrelevant or immaterial to the offence, such an admission is sufficient and the court should accept the plea (see *Chota bin Abdul Razak v PP* [1991] 3 MLJ 77 (HC)). The record must show that the magistrate himself read and examined the facts of the case to see whether they were conformable with the law and in support of the charge as the record must speak for itself (see *Ng Song Luak v PP* [1985] 1 MLJ 456 (HC)). If the facts admitted to do not constitute the offence charged, the magistrate will then have to consider whether to discharge the accused or enter a plea of not guilty and proceed to trial (see *Chin Ban Keat v R* and *Sau Soo Kim v PP* [1975] 2 MLJ 134 (FC)). In no event should the court acquit the accused if the facts do not disclose an offence (see *PP v Mahmud* [1974] 1 MLJ 85 (HC); *PP v Soon Siew Choon* [1976] 1 MLJ 189 (HC) and *PP v Mohamed Tarmizi* [1985] 1 MLJ 219 (FC)).

(2) Section 173(m)(2) of the CPC

It reads as follows:

> If the Court finds the accused guilty or if a plea of guilty has been recorded and accepted the court shall pass sentence according to law.

A plea of guilty is recorded when the accused pleads guilty after the charge has been read and explained to him. The court accepts the plea when it is satisfied that the accused understands the nature and consequences of his plea. This will be done after the accused has admitted the facts (see *PP v Abdul Aziz* and *Lian Kian Boon v PP*). The court is not bound to accept a plea of guilty in all cases. The accused is not to be taken at his word when he pleads guilty unless the plea is expressed in unmistakable terms with full appreciation of the essential ingredients of the offence. This rule of law is applied with all the greater stringency when the offence charged is complicated or serious (see *Heng Keng Khoon v PP* and *Munandu v PP* [1984] 2 MLJ 82 (HC)). Except in a case where the facts are simple and the law applicable to those facts is beyond doubt, it would be impossible to expect an accused person unversed in the law and unrepresented by counsel to be able to say whether he has been guilty of an offence involving difficult questions of law (see *Low Hiong Boon v PP* [1948–49] MLJ Supp 135 (HC)). Where an offence is of a technical nature and the accused is unrepresented, it is the duty of the trial magistrate to satisfy himself that the accused understands the technical nature of the charge before accepting his plea (see *PP v Yusof* [1964] MLJ 264 (HC)). If the charge contains one or more ingredients or questions and the accused is not represented, it is desirable that each ingredient and each question involved be explained by the magistrate himself to the accused and the accused's replies should be recorded. If, after recording them, the magistrate is in any doubt whether the plea is an unequivocal plea of guilty, a plea of not guilty should be entered (see *Koh Mui Keow v R* [1952] MLJ 214 (HC) and *Lo Kim Peng & Ors v PP* [1979] 1 MLJ 249 (HC)). Where an accused pleads guilty to an offence not known to law it ought not to be accepted by the court (see *Sau Soo Kim v PP* and *Lo Kim Peng & Ors v PP*). A plea of guilty by an accused in the absence of his counsel should not be accepted unless the court is satisfied that the absence of counsel has been properly accounted for. While the plea itself is lawful, the acceptance of such a plea in the absence of counsel is bad in law as without counsel's advice, the accused could not be said to have understood the nature and consequences of his plea or to have intended to admit without qualification the offence alleged against him (see *PP v Leng Chow Teng*). Similarly, a plea of guilty should not be accepted in the absence of the prosecutor as, in such a case, the facts will not be available (see *Re B Naidu* [1965] 1 MLJ 211 (HC)). The record must show that the plea of the accused has been accepted before recording a conviction (see *PP v Yiap Tai Juan & Ors* [1957] MLJ 38 (HC) and *PP v Tengku Hitam*). A confession of guilt does not become a plea of guilty unless and until it is accepted. If not accepted, the confession ought not be recorded. In such cases, the practice is to treat it as a plea of not guilty (see Sarkar, *Criminal Procedure Code* at p 451 cited with approval in *Lee Weng Tuck & Anor v PP* at p 147).

Having considered the applicable law in the light of what appears in the record, I am satisfied that the accused pleaded guilty personally after

A he understood the charge which was read and explained to him. The record also shows that he understood the nature and consequences of his plea at that stage. However, the learned magistrate did not follow the prescribed procedure in sentencing the accused.

Exhibit P2 is the written statement of facts tendered by the B prosecution. The law that I have adverted to makes it manifestly patent that the facts must be explained to the accused to enable the magistrate to satisfy himself that the accused intends to admit, without qualification, the offence alleged against him. The record does not show that the facts were explained to the accused. As I mentioned in the early part of this judgment, there is also no certainty that the facts as contained in exh P2 were C admitted by the accused. These breaches violate s 173(b) of the CPC. The record also does not disclose that the plea was accepted by the learned magistrate. This failure violates s 173(m)(2) of the CPC. As I said earlier, a confession of guilt does not become a plea of guilty till it is accepted. It is a cardinal principle of law that a plea of guilty must be completely D unreserved, unqualified and unequivocal (see *PP v Cheah Chooi Chuan* [1972] 1 MLJ 215 (HC)). The breaches in this appeal revolt against arriving at such a finding. It follows that the conviction and sentence of the accused cannot be sustained in law.

In considering the proper order to be made, I bear in mind s 305 of the CPC which provides that a person who has been convicted on his plea E of guilt is entitled to appeal only against the extent or legality of the sentence. However, once such an appeal has been lodged there is nothing to prevent an appellant from contending at the hearing that the conviction is illegal and requesting the court hearing the appeal to act in revision. The court is entitled to and will, where appropriate, act in revision and set aside F a conviction (see *Lee Yu Fah & Ors v PP*) and *Mohd Dalhar bin Redzwan & Anor v Datuk Bandar, Dewan Bandaraya Kuala Lumpur* [1995] 1 MLJ 645 (CA)). Upon revision, the proper order for the High Court to make is to set aside the plea of guilty and substitute it with a plea of not guilty and send the case back to the trial court (see *PP v Mohamed Termizi*).

G In the upshot, I set aside the plea of guilty of the accused in the exercise of my powers of revision and substitute it with a plea of not guilty and remit the case back to the Magistrate's Court at Jasin for trial.

*Order accordingly.*

H Reported by Hanim Kamaruddin

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